

ALSTON & BIRD LLP

601 Pennsylvania Avenue, N.W.
North Building, 10th Floor
Washington, DC 20004-2601

202-756-3300
Fax: 202-756-3333
www.alston.com

#29

August 13, 2004

VIA HAND DELIVERY



Jonathan G. Katz
Secretary
US Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, DC 20549

Re: Response to SR-NSCC-2003-21

Dear Sir:

We represent CheckFree Corporation ("CheckFree") and, on its behalf, we hereby respectfully submit this letter as part of our comments on Release No. 34-48846: Notice of Filing of a Proposed Rule Change Relating to the New Separately Managed Accounts Service dated November 26, 2003 ("Proposed Rule 59"), proposed by the National Securities Clearing Corporation ("NSCC"). In particular, we explain why the Money Management Institute's ("MMI") Separately Managed Accounts Operations Communications and Data Standards ("MMI Standards") cannot be used by other vendors in the separately managed accounts ("SMA") industry and, therefore, are not open standards. We also address several inaccuracies in the comment letter submitted by the NSCC dated July 21, 2004 ("NSCC Letter"). We continue to urge the staff and the Securities and Exchange Commission ("SEC") to reject the NSCC's Proposed Rule 59.

I. The MMI Data Standards are Not Open Standards

Since our initial comment letter on December 23, 2003, we have asserted that the MMI Standards are not open. Although the MMI and the NSCC argue otherwise by claiming that the MMI Standards will be available to industry participants despite the MMI's copyright,¹ the point that they fail to publicly acknowledge is that the MMI Standards will not be functional unless implemented in conjunction with the NSCC's proprietary "SMA Service Protocols" ("NSCC Protocols"). It is the functional benefit of

¹ See Letter from Christopher L. Davis, Executive Director, Money Management Institute ("MMI") to Alex Marasco, Executive Vice President, CheckFree (July 16, 2004).

One Atlantic Center
1201 West Peachtree Street
Atlanta, GA 30309-3424
404-881-7000
Fax: 404-881-7777

Bank of America Plaza
101 South Tryon Street, Suite 4000
Charlotte, NC 28280-4000
704-444-1000
Fax: 704-444-1111

90 Park Avenue
New York, NY 10016
212-210-9400
Fax: 212-210-9444

3201 Beechleaf Court, Suite 600
Raleigh, NC 27604-1062
919-862-2200
Fax: 919-862-2260

the standards to industry participants, not the mere availability of standards, which is at the center of the open versus closed debate. We therefore feel that it is necessary to underscore how this impacts the industry, CheckFree, and other potential vendors.

In an attempt to persuade the staff that the standards are open, the NSCC Letter asserts that, “[s]imilar to NSCC, a vendor could use the MMI Standards in developing its own proprietary [protocols], and would also be expected to be permitted to retain its proprietary interest in its own [protocols].”² We take issue with the NSCC’s assessment of their impact on the SMA industry. We agree that the SMA industry would benefit from the development of one set of open standards that are independent from the method of implementation and could be used in conjunction with a choice of protocols, or methods of implementing the standards. This ideal scenario would contain one set of open standards and numerous options of non-standardized protocols that would allow vendors and industry participants to innovate and compete for the most cost effective method of implementation. Unfortunately, the reality of the current situation is that, early on in the process of developing the standards, the MMI made a decision to exclusively empower a self-regulatory organization (“SRO”) with the resources to develop a set of protocols to service the MMI Standards. The result is mutually beneficial for the MMI and the NSCC because it: (1) allows the MMI Standards to gain legitimacy through association with an SRO; and (2) allows the NSCC to embed data elements from its NSCC Protocols into the MMI Standards,³ effectively commingling them so one cannot be implemented without the other. This creates just one option for the SMA industry: a set of standards to be used exclusively within the confines of the standardized NSCC Protocols.

The effect of the collaborative efforts between the MMI and the NSCC is that the MMI Standards and the NSCC Protocols are irrevocably intertwined and effectively inoperative without each other. One example of how this has been accomplished is sample pages from a working draft of the second version of the MMI Standards that contain several mandatory fields that require NSCC Protocol data for successful operation.⁴ Third party vendors do not have access to the contents of the NSCC data or the means used to create it. In other words, certain of the fields embedded in the MMI Standards are reserved for the NSCC Protocols thereby making the MMI Standards

² NSCC Letter at 2.

³ Version 1.1 of the MMI Standards is currently available on the MMI website and is the version referred to by the MMI and the NSCC for purposes of the current Proposed Rule 59 debate. It has been widely known throughout the industry since 2002, however, that Version 1.1 is about to be superseded by Version 2, which has been extensively revised. *See* Appendix A (email from the DTCC’s Special Advisor on the MMI Operations and Technology Standards Sub-Committee to members of the Sub-Committee on 9/29/03 stating that, “NOTE: When we publish the final version of the second edition (after comments, review, and final revision), this document [Version 1.1] will be obsolete”).

⁴ *See* Appendix B (references to NSCC data elements highlighted in purple). *See also* Appendices C and D (correspondence noting how specific NSCC data is to be used to populate a control field in the MMI Standards and noting the technical specifications for the protocols implementing the MMI Standards, which mimic the NSCC protocols).

useless to third-party vendors. As the NSCC previously has noted, the NSCC Protocols will only be available to members and vendors acting on behalf of NSCC members.⁵ The NSCC Letter further specifies that, "...the SMA Service Protocols would not be available for the purpose of developing competing technology." We must conclude, therefore, that vendors like CheckFree seeking to develop competing protocols to service the MMI Standards will be prevented from doing so because they will not have access to the key data elements that unlock the MMI Standards. The critical point that we would like to underscore is that the situation described above, namely the inability of third party vendors and financial institutions to engage the MMI Standards without participation in the NSCC's Protocols, undeniably results in closed standards that unfairly benefit the NSCC.

As a supplement to this discussion, we are also providing the Staff with a white paper written by Bruce Perens, Senior Research Scientist with the Cyber Security Policy Research Institute at George Washington University, an expert on open standards.⁶ CheckFree retained Mr. Perens to analyze whether the MMI Standards are open. Mr. Perens' white paper analyzes and discusses the difference between open and closed standards as well as the important relationship between standards and protocols. In Mr. Perens' opinion, the MMI Standards are not open.

II. The relevance of CheckFree's Unanswered Questions to the MMI

The MMI still has not answered the questions we posed to it initially on November 26, 2003 and again on May 28, 2004, which answers will determine whether the MMI Standards will be open.⁷ On July 16, 2004, CheckFree finally received a response from Mr. Chris Davis, Executive Director of the MMI, suggesting that CheckFree's representative on the MMI's Technology and Operations Data Standards Sub-Committee ("Sub-Committee")⁸ should pose the questions to the Sub-Committee (as opposed to the MMI). As a member of the Sub-Committee, CheckFree learned that other Sub-Committee members first discovered this responsibility after reading Mr. Davis' letter on the SEC website. We also learned that certain Sub-Committee members are dismayed that Mr. Davis chose to charge them with the responsibility for answering complicated intellectual property questions. In light of Mr. Davis' letter, we believe that the MMI does not intend to rigorously address these questions pertaining to its proprietary standards.

⁵ Notice of Filing of a Proposed Rule Change Relating to the New Separately Managed Accounts Service, Exchange Act Release No. 34-48846, 68 Fed. Reg. 67,714 (Dec. 3, 2003) (proposed Oct. 15, 2003).

⁶ See Appendix E.

⁷ See Letter from Margaret A. Sheehan, Alston & Bird, LLP, on behalf of CheckFree Corporation, to Jonathan G. Katz, Secretary, Securities and Exchange Commission (May 28, 2004).

⁸ This Sub-Committee, renamed from the MMI Technology and Operations Sub-Committee for Data Standards, is charged with the supervision and oversight of the MMI Standards effort.

The relevance of CheckFree's questions to the MMI are rooted in the basic clarification that the industry needs regarding the terms under which the MMI will allow the larger community to use the MMI Standards and how the MMI plans to promote interoperability among implementations. Increasingly, public specifications, or standards, include features that may be encumbered by intellectual property rights owned either by contributors or even persons who were not parties to the development of the standard. Likewise, participants in standards development inadvertently offer contributions that are copyrighted without informing the organization of the need to gain permission to use the copyrighted material. Organizations that successfully publish standards have governance procedures in place to vet their work against such intellectual property rights and inform potential users of any encumbrances.⁹

Even standards that are clear of intellectual property encumbrances sometimes require that product vendors license the standard via a plethora of financial terms ranging from simple license fees to royalties on sales. These fees and/or royalties may affect the cost of the vendor's product using the standard. Vendors rightfully desire to understand *upfront* whether licensing costs will be reasonable or burdensome.

Public standards rarely, if ever, are fully ready for use in product development when they are first published. Committees often scale back the scope of the initial work to get a standard published more rapidly. Consequently, problems with the standard often emerge as developers try to use it in building real products and applications. Thus, a need almost always arises to evolve the standards beyond the first version. Companies investing in product development with a standard want to understand the degree to which they will be able to influence the evolution and further maturation of the standard. Nothing is more frustrating for product development and application than to find problems with a standard and not have any avenue to address inefficiencies.

Companies not only rely upon having an avenue to participate in the ongoing maturation of a standard, but they also rely upon confirmation that the ongoing evolution process will not favor any one vendor over another. Just as development of the original standard should involve an open participatory process with pre-determined consensus and voting rules, those same rules need to apply to the development of future versions. If any particular vendor receives preferential treatment, the standard can easily accrete features that require that vendor's implementation and disadvantage any other independent implementations. In these cases, the standards are not considered to be open standards.

As multiple independent implementations of a public standard emerge, vendors and potential customers use interoperability testing mechanisms to insure that customers will be able to communicate with each other even though they have purchased products that use the standard from completely different vendors. Many organizations developing such standards develop conformance test suites that allow a vendor to insure that their

⁹ See Appendix E for a discussion of the importance of the governance process to open standards.

product correctly implements the syntactical and semantic requirements of the published standard. Ideally, standard development organizations sponsor interoperability testing between implementations and certify products that successfully demonstrate interoperability with a mark analogous to the “Good Housekeeping Seal of Approval”™.

Therefore, the questions that CheckFree has repeatedly posed to the MMI are typical and essential inquiries for the successful development of open industry standards. The answers to the questions will reveal issues such as hidden intellectual property rights, current and future costs to vendors seeking to build protocols to the standards, and the ability of customers to use the same standards with different protocols. The MMI’s reluctance to tackle these important questions signifies its lack of understanding and interest in ensuring successful open standards for the SMA industry. Unfortunately, it also indicates that the MMI Standards will indeed be closed. We urge the staff and the SEC to reject the NSCC proposal, or minimally, not to act on the proposal until the MMI thoroughly and adequately addresses these questions, which we believe will show that the standards are not open.

III. Inaccuracies in the NSCC Letter

We take issue with the NSCC’s comments suggesting that it developed its NSCC Protocols independently of the MMI’s creation of the MMI Standards.¹⁰ In fact, the development of the MMI Standards and the NSCC Protocols overlapped through the collaborative effort of the MMI and the NSCC. In early 2002, the Sub-Committee first held meetings to develop open standards. Shortly following these initial meetings, the MMI invited the NSCC to participate in the development of the MMI Standards. In July 2002, the MMI published the first version of their data standards requesting industry feedback and developed a Technical Working Group (“TWG”),¹¹ chaired by a representative of the NSCC, to further develop the MMI Standards and what were thought to be open protocols for implementing the standards. As the NSCC Letter states, CheckFree did participate on the TWG, however, the goal of the group was the development of open standards – not standards exclusively made available through the NSCC. Shortly thereafter, in December 2002, the TWG was abruptly relieved of its duties for version 1 of the MMI Standards¹² and NSCC launched a pilot program to test what would become the NSCC Protocols. By spring of 2004, the NSCC and the MMI

¹⁰ See NSCC Letter at 2 (stating, “[t]he NSCC developed the schemas and other protocols supporting its proposed SMA Service independent of the MMI and its committees” and “[t]he SMAS Service Protocols contain elements proprietary to NSCC which were developed by NSCC, at NSCC’s sole expense, independent of the MMI, the Subcommittee and any other third parties...”).

¹¹ The TWG, comprised mostly of technical and operational staff from the industry, was created to develop the technical aspects of the standards.

¹² See Appendix F (email announcing the dismissal of the TWG). Once the relationship between the MMI and the NSCC became clear during the process, CheckFree realized that the MMI was not utilizing the TWG according to a typical standard-setting process and chose not to actively participate in the TWG for version 2. CheckFree does, however, continue to receive TWG correspondence.

had dropped all pretense of these being separate efforts, as evidenced by mandatory NSCC proprietary fields in version 2 of the MMI Standards. Therefore, the NSCC's statement that it developed the NSCC Protocols independent of the MMI is false and misleading.

IV. What is the NSCC's role if not an SRO?

The NSCC continues to avoid clarifying what exactly its role is with respect to the separately managed accounts industry and the related transfer of data among sponsors and vendors. Although the NSCC has admitted that the MMI designated the NSCC because of its status as "an industry utility," it has vehemently denied any intent to act as an SRO to the SMA industry.¹³ Yet, most recently in its latest comment letter, the NSCC notes that "CheckFree was the first vendor represented on this Sub-Committee allowed this exception [of not being a sponsor or investment manager in the SMA industry]."¹⁴ Thus, the NSCC admits that it was not itself acting in the capacity of a vendor on the same Sub-Committee. In fact, CheckFree's representative on the Sub-Committee recalls that the NSCC representatives on the Sub-Committee described their role on the Sub-Committee as one to help the SMA industry in the same way they helped the mutual fund industry.

The only possible explanation is that the NSCC was given a leadership role on the Sub-Committee due to its special status as an SRO and was acting in that special capacity when it united with the MMI to create the intertwined set of standards and protocols meant to dominate the SMA industry.¹⁵ The NSCC was allowed to work exclusively with the MMI due to its status as a "regulated and transparent" "industry utility" in ways

¹³ See Letter from Charles Douglas Bethill, Thatcher Proffitt & Wood, LLP, on behalf of the NSCC, to Jonathan G. Katz, Secretary, Securities and Exchange Commission at 10 (February 2, 2004). The letter notes, "Participants in the SMA Industry want NSCC (*rather than a commercial vendor*) to provide the service because *inter alia* NSCC is an industry utility which is regulated and transparent" (emphasis added).

¹⁴ NSCC Letter at 1.

¹⁵ It is worth noting that the NSCC has, in our opinion, benefited substantially and continually from the confusion surrounding its status as a "not-for-profit" corporation. The NSCC is a taxable corporation, not entitled to any special status as a charitable or other non-profit organization under the U.S. Internal Revenue Code. The NSCC has, however, repeatedly allowed the industry to refer to it as a "not-for-profit corporation," thus creating the misleading impression that its motives are somehow more virtuous and less motivated by profit and growth than those of other vendors such as CheckFree. See Interview With the New Joint Venture Chairman, available at <http://www.dtcc.com/Publications/dtcc/may00/interview.html> (interview of Robert McGrail by "@DTCC" highlighting the uniqueness of the joint venture between the DTCC, a not-for-profit organization, and Thomson Financial, a for-profit company) (last visited Aug. 12, 2004); see also *DTCC Fills Technology Leadership Vacuum: Plans to Offer A Standardized, Centralized, Communications System for Separately Managed Accounts*, SENIOR CONSULTANT: THE VOICE OF THE INVESTMENT MANAGEMENT CONSULTANT (Senior Consultant, Richmond, VA), Dec. 2003, available at <http://www.srconsultant.com/Articles/2003-12-DTCC-Tech-Leadership.pdf> (introducing the DTCC as a non-profit organization) (last visited Aug. 12, 2004).

Jonathan G. Katz

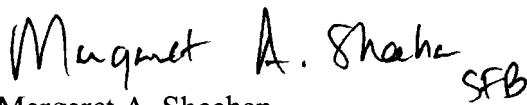
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that CheckFree and other vendors were not permitted access. The ultimate impact of their collaboration is that the NSCC has embedded its protocols into the MMI Standards, which will cause an undue burden on competition by prohibiting commercial vendors from using the MMI Standards to develop competing protocols. This is precisely what Congress intended to prevent by statutorily prohibiting SROs from adopting rules that create an undue burden on competition.

We appreciate your careful consideration of the matters noted herein. Should you have additional questions or need additional information, please do not hesitate to contact me at (202) 756-3305.

Sincerely,


Margaret A. Sheehan

SFB:sfb

Enclosures

cc: Ms. Laura E. Binion
General Counsel
CheckFree Corporation
4411 East Jones Bridge Road
Norcross, Georgia 30092

Office of Commissioner Paul S. Atkins
U.S. Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549

Office of Commissioner Roel C. Campos
U.S. Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549

Office of Chairman William H. Donaldson
U.S. Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549

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Office of Commissioner Cynthia A. Glassman
U.S. Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549

Office of Commissioner Harvey J. Goldschmid
U.S. Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549

APPENDICES

- A. Email from [DTCC Special Advisor to MMI Technology and Operations Standards Sub-Committee] (“Sub-Committee”) to members of the Sub-Committee (Sept. 29, 2003).
- B. Sample pages from Version 2 of the MMI Standards, obtained by CheckFree as a member of the Technical Working Group (“TWG”).
- C. Email from [State Street Corporation’s TWG Representative] to other TWG members referencing specific NSCC data to be used to populate a control field in the MMI Standards (May 13, 2004).
- D. Email from [DTCC’s TWG Representative] to other TWG members outlining the requirements for the technical protocols implementing the MMI Standards (Sept. 4, 2002).
- E. Bruce A. Perens, “Instituting Fairness and a True Open Standards Process for MMI’s SMA Data Standard”.
- F. Email from [DTCC’s TWG Representative] to other TWG members relieving the members from their duties on the TWG (Dec. 5, 2002).

From [DTCC Special Advisor to MMI Technology and Operations Standards Sub-Committee]
To <List Truncated>
cc <List Truncated>
Subject MMI Operations and Technology Standards, version 1.1, Sept 2002
Date 09/29/2003 11:58 AM

Hi Gang,

The attached is the final standards that we published, after the standards were published for comment in July, 2002. This final version incorporates the accepted changes we made off of the comments we received from vendors, the larger MMI membership body, and the version 1 Technology Working Group. This is the document that we need to work from and refer to as we drive to publish the second edition. (NOTE: When we publish the final version of the second edition (after comments, review and final revision), this document will be obsolete. We are on target to have the second edition published for comments in Nov / Dec, with a goal to formally publish the second edition in early Q1, 2004.)

Version 1.1 is distributed as a PDF file as the original is too large to email. Also, as a PDF file, it is easier to linked from the MMI web site, if the MMI chooses to place it there.

Best Regards,

[DTCC Special Advisor to MMI Technology and Operations Standards Sub-Committee]

Field ID	Data Fields	Data Field Descriptions	TWG Format	TWG Comments/Questions	New Acct Profile	New Acct Funding	Authorization to Trade	Contribution	Distribution	Termination	Debit
A	Control Number	Message ID number to identify notification message throughout the cycle	15X		M	M	M	M	M	M	M
B	Notification Type	Notification Type Code Table	3X		M	M	M	M	M	M	M
C	Notification Date	Date that the message was transmitted	mddccyy		M	M	M	M	M	M	M
D	Notification Time	Time that the message was transmitted	hhmmss		M	M	M	M	M	M	M
E	Sender	Industry accepted code (for routing purposes)	Participant Code 4X		M	M	M	M	M	M	M
F	Receiver	Industry accepted code (for routing purposes)	Participant Code 4X		M	M	M	M	M	M	M
1	Client Account Number	Sponsor's Client Account Number	20X	Sponsor account number up to 6 lines of 40 characters	M	M	M	M	M	M	M
2	Legal Account Title	Official title of client account	6(40X)		M	M	M	M	M	M	M
3	Client Identification Number	Client personal identification number for this specific account	60X	e.g.: Passport # or drivers license #	M						
4	Client Identification Description	Document Type that client provided for personal identification number (Tax Identification Number, Passport Number, Alien Identification Number, Military Identification Number)	60X	Describes above	M						
5	Custodian Designation	Designation of Custodian for specified account	11X (DTCC ID)	DTC # or BIC code	X	X	X	X	X	X	X
6	Custodian Acct Number	Custodian number for specified account. Fill in Client Account Number if not different.	20X		M	M	M	M	M	M	M
7	Sponsor Program	Sponsor Firm's program name	20X		M	M	M	M	M	M	M
9	Investment Manager Style	Investment Manager's style name	40X	(MDA=multi disciplinary account)	M	X	X	X			
10	Branch Ledger Number	Sponsor firm branch identification number. (%%% can be used if no branch ledger number exists.)	10X	none="none"	M						
11	FC/Team Number	Sponsor firm FC/Team identification number	10X		M	X	X	X	X	X	
12	FC/Team Name	FC/Team name associated to specified account	40X		M	X	X	X	X	X	
13	3rd Party Identification	3rd party identifying number	11X (DTCC ID)	DTC # or BIC code	X						
14	3rd Party Name	3rd party company name	20X		X						
15	FC/Team Phone Number	FC/Team phone number for specified account	18N	4n (country) 3n (area) 3n (exch) 4n (#) 4n (ext)	M			X	X	X	
16	FC/Team Address 1-4	FC/Team mailing address for specified account	4(40X)	4 lines of 40 characters	X						
17	FC/Team City	FC/Team mailing address for specified account	40X		X						
18	FC/Team State	FC/Team mailing address for specified account	2X	US only	X						
19	FC/Team Province	FC/Team mailing address for specified account	40X	not U.S. only	X						
20	FC/Team Zip	FC/Team mailing address for specified account	10X		X						
21	FC/Team Country	FC/Team mailing address for specified account	2X	ISO	X						
22	FC/Team Fax Number	FC/Team fax number for specified account	18N	4n 3n 3n 4n 4n	X						
23	FC/Team e-mail	FC/Team email address for specified account	40X	(required if "Y" field 24)	X	X	X	X	X	X	
24	FC/Team correspond via e-mail	Designation of FC/Team's desire to receive IM correspondence via email	1X	Y/N	X						
25	Margin/Collateral	Designates if the account is a margin account or collateral at the Custodian	1X	M,C,N	X						

Field ID	Data Fields	Data Field Descriptions	TWG Format	TWG Comments/Questions	Short	Restriction Change	Voluntary Corp Actions	Voluntary Corp Action	Fees Detailed	Fees Summary	Tax Trading	Specific Security Tax
A	Control Number	Message ID number to identify notification message throughout the cycle	15X		M	M	M	M	M	M	M	M
B	Notification Type	Notification Type Code Table	3X		M	M	M	M	M	M	M	M
C	Notification Date	Date that the message was transmitted	mddccyy		M	M	M	M	M	M	M	M
D	Notification Time	Time that the message was transmitted	hhmmss		M	M	M	M	M	M	M	M
E	Sender	Industry accepted code (for routing purposes)	Participant Code 4X		M	M	M	M	M	M	M	M
F	Receiver	Industry accepted code (for routing purposes)	Participant Code 4X		M	M	M	M	M	M	M	M
1	Client Account Number	Sponsor's Client Account Number	20X	Sponsor account number up to 6 lines of 40 characters	M	M	M	M	M		M	M
2	Legal Account Title	Official title of client account	6(40X)	e.g.: Passport # or drivers license #	M	M	M	M	M		M	M
3	Client Identification Number	Client personal identification number for this specific account	60X									
4	Client Identification Description	Document Type that client provided for personal identification number (Tax Identification Number, Passport Number, Alien Identification Number, Military Identification Number)	60X	Describes above								
5	Custodian Designation	Designation of Custodian for specified account	11X (DTCC ID)	DTC # or BIC code	X	X	M	M	X		X	X
6	Custodian Acct Number	Custodian number for specified account. Fill in Client Account Number if not different.	20X		M	M	M	M	M		M	M
7	Sponsor Program Investment Manager	Sponsor Firm's program name	20X		M	M	M	M	M	M	M	M
9	Style	Investment Manager's style name	40X	(MDA=multi disciplinary account)					X	X		
10	Branch Ledger Number	Sponsor firm branch identification number. (%% can be used if no branch ledger number exists.)	10X	none="none"					X			
11	FC/Team Number	Sponsor firm FC/Team identification number	10X			X			X		X	X
12	FC/Team Name	FC/Team name associated to specified account	40X			M			X		X	X
13	3rd Party Identification	3rd party identifying number	11X (DTCC ID)	DTC # or BIC code								
14	3rd Party Name	3rd party company name	20X									
15	FC/Team Phone Number	FC/Team phone number for specified account	18N	4n (country) 3n (area) 3n (each) 4n (#) 4n (ext)							X	X
16	FC/Team Address 1-4	FC/Team mailing address for specified account	4(40X)	4 lines of 40 characters								
17	FC/Team City	FC/Team mailing address for specified account	40X						X			
18	FC/Team State	FC/Team mailing address for specified account	2X	US only					X			
19	FC/Team Province	FC/Team mailing address for specified account	40X	non U.S. only					X			
20	FC/Team Zip	FC/Team mailing address for specified account	10X						X			
21	FC/Team Country	FC/Team mailing address for specified account	2X	ISO					X			
22	FC/Team Fax Number	FC/Team fax number for specified account	18N	4n 3n 3n 4n 4n								
23	FC/Team e-mail	FC/Team email address for specified account	40X	(required if "Y" field 24)		X			X		X	X
24	FC/Team correspond via e-mail	Designation of FC/Team's desire to receive IM correspondence via email	1X	Y/N								
25	Margin/Collateral	Designates if the account is a margin account or collateral at the Custodian	1X	M,C,N								

Field ID	Data Fields	Data Field Descriptions	TWG Format	TWG Comments/Questions	Wash Sale Restriction Notification	Proxy Voting	FC/ Team Changes	Custodian Changes	Halt/ Resume Trading	CPU	Investment Manager Style
A	Control Number	Message ID number to identify notification message throughout the cycle	15X		M	M	M	M	M	M	M
B	Notification Type	Notification Type Code Table	3X		M	M	M	M	M	M	M
C	Notification Date	Date that the message was transmitted	mddccyy		M	M	M	M	M	M	M
D	Notification Time	Time that the message was transmitted	hhmmss		M	M	M	M	M	M	M
E	Sender	Industry accepted code (for routing purposes)	Participant Code 4X		M	M	M	M	M	M	M
F	Receiver	Industry accepted code (for routing purposes)	Participant Code 4X		M	M	M	M	M	M	M
1	Client Account Number	Sponsor's Client Account Number	20X	Sponsor account number up to 6 lines of 40 characters e.g.: Passport # or drivers license #	M	M	M	M	M	M	M
2	Legal Account Title	Official title of client account	6(40X)		M	M	M	M	M	M	M
3	Client Identification Number	Client personal identification number for this specific account	60X							M	
4	Client Identification Description	Document Type that client provided for personal identification number (Tax Identification Number, Passport Number, Alien Identification Number, Military Identification Number)	60X	Describes above						M	
5	Custodian Designation	Designation of Custodian for specified account	11X (DTCC ID)	DTC # or BIC code	X	X	X	M	X	X	X
6	Custodian Acct Number	Custodian number for specified account. Fill in Client Account Number if not different.	20X		M	M	M	M	M	M	M
7	Sponsor Program Investment Manager	Sponsor Firm's program name	20X		M	M	M	M	M	M	M
9	Style	Investment Manager's style name	40X	(MDA=multi disciplinary account)				X			M
10	Branch Ledger Number	Sponsor firm branch identification number. (%%% can be used if no branch ledger number exists.)	10X	none="none"			M			M	
11	FC/Team Number	Sponsor firm FC/Team identification number	10X		X		M		X	M	X
12	FC/Team Name	FC/Team name associated to specified account	40X		X		M		X	M	X
13	3rd Party Identification	3rd party identifying number	11X (DTCC ID)	DTC # or BIC code						X	
14	3rd Party Name	3rd party company name	20X							X	
15	FC/Team Phone Number	FC/Team phone number for specified account	16N	4n (country) 3n (area) 3n (exch) 4n (#) 4n (ext)	X		X		X	X	
16	FC/Team Address 1-4	FC/Team mailing address for specified account	4(40X)	4 lines of 40 characters			X			X	
17	FC/Team City	FC/Team mailing address for specified account	40X				X			X	
18	FC/Team State	FC/Team mailing address for specified account	2X	US only			X			X	
19	FC/Team Province	FC/Team mailing address for specified account	40X	non U.S. only			X			X	
20	FC/Team Zip	FC/Team mailing address for specified account	10X				X			X	
21	FC/Team Country	FC/Team mailing address for specified account	2X	ISO			X			X	
22	FC/Team Fax Number	FC/Team fax number for specified account	18N	4n 3n 3n 4n 4n			X			X	
23	FC/Team e-mail	FC/Team email address for specified account	40X	(required if "Y" field 24)	X		X		X	X	X
24	FC/Team correspond via e-mail	Designation of FC/Team's desire to receive IM correspondence via email	1X	Y/N			X			X	
25	Margin/Collateral	Designates if the account is a margin account or collateral at the Custodian	1X	M,C,N						X	

Field ID	Data Fields	Data Field Descriptions	TWG Format	TWG Comments/Questions	New Acct Profile	New Acct Funding	Authorization to Trade	Contribution	Distribution	Termination	Debit
26	Total Account Value	Intended Sum of cash and securities (USD) at inception or time of style change	14V2	14V2	M						
	Currency Code	USD only supported in this release	3X	USD (new field, added)	M						
27	Cash Value for this account	Intended Cash in client account for investment (USD) at inception or time of style change	14V2	14V2	X						
28	Security Value for this account	Intended Value of securities in account for investment (USD) at inception of time of style change	14V2	14V2	X						
29	Custodian Contact	Custodian contact name (Blank if none)	40X		X						
30	Custodian telephone number	Telephone number of custodian contact (Blank if none)	18N	4n (country) 3n (area) 3n (exch) 4n (#) 4n (ext)	X						
31	Clearing Firm	Name of the clearing firm if the sponsor clears through another firm	40X		X						
32	Clearing Number	Sponsor's clearing number at the clearing firm, if the Sponsor clears through another firm	9X	Clearing Number(DTCC #)	X						
33	Investment Manager Change	Indicates Investment Manager Change within Sponsor Firm	1X	Y/N	M						
34	Client Account Number Change	Indicates Client Account Number change	1X	Y/N	M						
35	Old Client Account Number	Prior client account number for specified account	20X	Sponsor Account #	M						
36	Account Type	Legal Entity	6X	Define Table	M						
37	Account Type - ERISA	Indicates that this is an ERISA account	1X	Y/N	M						
38	Acct Risk Tolerance	Client's allowable investment risk for designated assets in the selected strategy	60X	Free Form	M						
39	Tax Status	Account tax status related to US taxation	1X	Y/N	M						
40	Manage Tax Aware	Designation of client desire to have specified account managed with tax sensitivity	1X	Y/N	M						
41	Tax Strategy Transition Instructions	Instructs Investment Manager to liquidate positions in transition period. Required if manage tax aware equals yes.	120X		X						
42	Muni Account State Designation	Designates client request to have municipal strategy invested in specified state	1X	Y/N/F	X						
43	Muni Account State Designation Code	Client designated state or National focus for specified account	2X	Multi State?	X						
44	Systematic Distribution	Designate the requirement for regularly occurring account distributions	2X	MO, QT, BM, SA, YR	X						
45	Systematic Distribution Start Date	Designation of initial systematic withdrawal date	8X	MMDDCCYY	X						
46	Distribute All Income	Designation that all income will be withdrawn from the account	1X	Y/N	X						
47	Systematic Distribution Amount	Designated dollar amount of assets for systematic distribution	12V2		X						
48	Unsupervised Assets	Designation that the specified client account will hold unsupervised assets	1X	Y/N	X						

TWG meeting 5/13/2004.

Attendees (by phone): <List Truncated>

After a late start due to a bad conference password number being distributed (sorry again folks) the meeting was opened with a fast roll call followed by a brief outline of the overall agenda and goals of the TWG meetings. This was followed by a brief description of the NSCC hub & finally of the MMI MATRIX worksheet.

At this point the TWG began discussing the format and boundaries of the individual fields for the base header and the new account profile.

Issues of note:

Field id: A - CONTROL NUMBER (first in header): Question: is this field Alpha, numeric or a/n? Assumption: This field is transmitted blank and returned by the NSCC hub populated via the ack.

Field id: C - Time Stamp: this field should be represented as two separate distinct fields, date represented as: mmddccyy & time: hhmmss

Item 5: Custodian Designation: Question: is this DTC ID?

Items 13 & 14: the purpose of these fields are not know.

Item 23: FC/team e-mail: Question: Should this field be mandatory if field 24 = "Y"

New Field Added: CURRENCY CODE (after field 26): The TWG believes Currency code should be added to describe field 26 above (Total Account Value). This field will be defaulted to USD in the first few releases of the standards, however having this field described at this time will make the standard more transportable for future releases supporting more international editions.

After field 26 and the addition of the new field Currency Code, the meeting was adjourned.

Please be advised, due to my pending vacation (Wednesday through Tuesday, 5/19 - 5/25) this Thursday's meeting will be canceled. We will resume at the normal time on Thursday 5/27.

Once again, the correct access number for the call is: 866-680-0168 pw: 664680

Thanks to all participants and the people from the Standards Committee who were all so valuable in this first TWG meeting.

[State Street Corporation's TWG Representative]



MMI Matrix TWG.xls

From: [DTCC's TWG Representative]
To: <List Truncated>
Cc: <List Truncated>
Subject: Minutes to Technical Working Group
conference call
Date: 09/04/2002 05:17 PM

Attached are the minutes.

Also please provide me with your comments regarding the technical protocols listed below. Based on the discussions on conference call, the following list of technology solutions are appropriate. Please let me know if you do not agree with this list of technical assumptions.

- Support for any of the following communication protocols.
 - TCP/IP, HTTPS, non-anonymous using a client digital certificate over the internet
 - TCP/IP, HTTPS, anonymous, over the internet
- Message Format & Standard: XML
- Message Protocol: SOAP (Simple Object Access Protocol) (without remote method invocation in the initial phases)
- Support for multiple software/schema versions
- SOAP / Envelope / Header -> System / Routing / Message / Route History Information
- SOAP / Envelope / Body -> Business Message

(See attached file: Minutes SMA Technical Working Group 09032002.doc)

Regards,

[DTCC's TWG Representative]

INSTITUTING FAIRNESS AND A TRUE OPEN STANDARDS PROCESS FOR MMI'S SMA DATA STANDARD

Bruce Perens
bruce@perens.com
Perens LLC

ABSTRACT

The Money Management Institute (MMI) and the NSCC have created an SMA data standard and associated network protocol to consolidate network connections within the Separately Managed Accounts industry. While the creation of industry standards is a laudable goal, the product of the MMI and NSCC collaboration creates a monopoly, discriminates unjustly and arbitrarily against other vendors, and micromanages the transaction work flow to a much greater extent than would be required simply to facilitate communications. Throughout this process the MMI has shown a misunderstanding of the standards process and the proper governance of an industry standard.

ABOUT THE AUTHOR

Bruce Perens is a Senior Research Scientist with the Cyber Security Policy Research Institute at George Washington University. He has served as an Invited Expert on the Patent Policy Board of W3C, the World Wide Web Consortium. He is founder of the Linux Standard Base, and currently serves on its Intellectual Property Policy working group.

Perens is a member of a board of directors of Open Source Risk Management, an insurance and risk mitigation firm. He is a major stockholder in Progeny, a Linux software engineering firm. As series editor for *Bruce Perens Open Source Series* with Prentice Hall, he has published 10 books. He operates Perens LLC, a strategic consulting firm in Berkeley, California.

REFERENCES

- *The Standards Edge*, by Sherrie Bolin, ISBN 0974864811. Available via Amazon.com.

- *Definition of Open Standards*, Government of Denmark, National IT and Telecom Agency, June 2004.
- *An Objective Definition of Open Standards*, Michael Tiemann, Vice President of Open Source Affairs, Red Hat, Inc.

THE PROBLEM

The MMI set out to standardize SMA communications within the money management industry, and to consolidate those communications by replacing a highly cross-connected ad-hoc network with a central-hub "SMA network" requiring fewer connections. The MMI focused its own efforts on creating a data standard that would define the information payload for communications between sponsors and managers; however, the resulting data standard lacked a protocol vehicle to carry the information payload. Realizing this deficiency, the leadership of the MMI data standard effort turned to the NSCC to define and provide a communications protocol (NSCC's SMA Services) that would serve as the vehicle of choice to carry the MMI data standard payload. The net result of the collaboration of the MMI and NSCC is a closed specification and is far from an open standard. While a number of organizations contributed to the initial version of the MMI data standard, the NSCC claims to have solely developed the accompanying protocol as a proprietary specification. To make matters worse, the draft MMI Data Standard incorporates mandatory data elements that require the accompanying NSCC SMA Services protocol. Consequently we now have the situation where the proposed SMA industry's payload can be carried on one and only one vehicle - the NSCC's proprietary protocol.

This unfortunate outcome would never have occurred had the MMI understood accepted norms for the fair and equitable governance of an open standards development process. Instead of creating a useful standard that would improve the infrastructure of the rapidly growing Separately Managed Accounts industry, the MMI and the NSCC are attempting to establish the NSCC as the sole and arbitrary controller of both the network and protocol.

THE STANDARDS PROCESS

Standards are agreements across an industry that facilitate interoperability within that industry. The earliest standards were agreements across a market to use common units of length, weight, and volume, and common nomenclature used to refer to them. As ancient standards set units and nomenclature, modern ones set the form of electronic and computer communication.

Standards have always come with governance. In the earliest days, communities had a monarch who, among other duties, would set standards for his realm. In modern standards governance, we replace the king with a democratic consensus process. In general, much more than a simple majority is required to approve a standards draft. Many standards organizations insist on unanimous approval before a technical standard can be approved. This provides the working group with a very strong incentive to achieve consensus across all players. These organizations only reluctantly accept less than unanimous approval of policy, rather than technical, decisions.

Developing consensus across an industry requires an element of fairness and equitability - or agreement will always be less than total. The best practice in this regard is referred to as an *Open Standard*. Open Standards admit all parties that would use them, without discriminating against one party at the expense of another. Their governance is similarly without discrimination, so that one party can not unfairly influence what the standard says at the expense of another party.

The recent rise of intellectual property licensing in software, and its inevitable extension to software standards, has led to a more rigorous definition of what governance and intellectual property terms are called for in something that is to be considered an Open Standard. The problem is that a standards document thought to be "Open" simply because of its availability can actually be encumbered by poorly defined intellectual property policy and unfair governance. This fact may not be immediately visible to the implementers or even the standards working group. Occasionally a "submarine" strategy is used, in which the intellectual property restrictions are revealed late in the process, when parties have already made a serious investment in the standard. This has recently prompted several organizations to create formal definitions of Open Standards.

WTO, the World Trade Organization which promulgates trade treaties to which the U.S. is signatory, provided these principles for international standards organizations:

Transparency.

All essential information regarding work planning, work under progress and final results should be made easily accessible to all interested parties and throughout all stages of standards development. Appropriate time and opportunities for written comments should be provided.

Openness.

Any interested national member should be provided with meaningful opportunities to participate in standards development.

Impartiality and consensus.

The standards development process should be conducted in a non-discriminatory way and should not give privilege to, or favor the interests of, a particular supplier or country. Conflicting arguments must be reconciled to satisfy all national members.

WTO/G/TBT/9 of 10 November 2000, and Annex 4 thereof.

The Danish government statement which I have included as an appendix to this document is representative of ones proposed elsewhere, and includes the succinct statement:

An Open Standard is accessible and free of charge to all. It remains accessible and free of charge.

These are just two citations. Bolin's book provides many similar expressions from government, industry, and academia.

The path to creation of a communication standard starts with a communication protocol. A protocol is a technical definition of the form of communications, which may be proposed by a single entity or developed collaboratively. In order to make a standard out of a protocol, we add the policies regarding fairness of use and governance, and we come to a consensus across the industry. Consensus generally comes only after protracted discussion, argument, and modification of the proposal until it is acceptable by all parties. If there is a perception of technical flaw or lack of fair policy, this will prevent the consensus that makes a protocol into a standard. Most real standards organizations will not approve a proposal if *even one* party rejects the standard draft.

The word *standard* is abused in commerce. Often it is applied to a product simply because that product has achieved market dominance, even though that choice provides none of the fairness and equitability that is the hallmark of a true Open Standard. Similarly, communication protocols and definitions are incorrectly referred to as standards when they lack the fair governance of a real standard.

It is this abuse of the word "standard" that MMI has made with its purported "SMA Standard". Without meeting the criteria for a truly Open Standard, what the MMI has is a SMA data specification without any sort of fairness process. To compound the error, MMI has designated NSCC as a monopoly network operator with the sole authority to define and provide the SMA protocol and associated infrastructure. In the NSCC's comment letters, dated February 2, 2004

and July 21, 2004, the NSCC makes clear that it will exclude third party vendors from the right to practice the SMA Protocol intellectual property if they seek to develop protocols independent of the NSCC's protocol infrastructure. Given that the MMI standards incorporate SMA Protocol data elements, this effectively excludes the use of the MMI standards by third party vendors.

An additional impediment to third party vendors and other potential SMA clearing houses is that the current SMA protocol document goes far beyond the requirements of standardizing communications, and defines the work flow of a transaction in a way that is specifically advantageous to NSCC and to the disadvantage of third party vendors. A real standard would provide interoperability without constraining the process.

There is no question that the present implementation of the SMA protocol and network by MMI and NSCC deliberately excludes third party vendors. The SMA protocol can not and should not be referred to as any sort of "standard" while it locks out part of its own industry.

REFORMING THE SMA PROCESS

Reform of the SMA process would require both policy and technical changes.

First, MMI must recognize that it has closed out significant players in its attempt to create a standard. A non-discriminatory governance that admits all market players to the standards creation and evolution process must be instituted. The policies of more accomplished communication standards organizations should be consulted in creating a real standards process for MMI. W3C is recommended as a prototype to be emulated, because literally every word of its processes has been painstakingly reviewed and argued over by representatives of many companies. Often more than 10 attorneys have been in attendance at a policy working group meeting. This has provided a degree of legal clarity that is not present in other organizations.

Second, the MMI must articulate a clear intellectual property policy that specifies licensing terms, conditions for submission of contributions with associated patent rights, copyright acknowledgement requirements, and accepted extension mechanisms so that users of the standard can add additional data elements without fear of violating license terms.

Third, the MMI must perform due diligence to insure that elements under restrictive intellectual property licensing are not introduced into the standard as mandatory requirements. To do so would unfairly advantage the organization that owns that property. MMI should require that each participant in the SMA

development grant all implementers the legal right to practice the intellectual property embodied in the standard to the extent necessary to comply with the standard. The MMI must also perform extreme due diligence to prevent the introduction of mandatory data elements that require a particular implementation or proprietary protocol.

Finally the MMI should step up to the plate of defining a full open standard that will meet the needs of the SMA industry. As noted above, a payload without a vehicle to carry it is of nominal use at best. This industry needs an open standard that defines both the information payload and an accompanying protocol that will support true interoperability between SMA industry parties. Once a robust standard exists, numerous vendors and in-house application developers will readily work together to build an SMA infrastructure for the next decade.

From: [DTCC's TWG Representative]
To: <List Truncated>
cc: <List Truncated>
Subject:
Date: 12/05/2002 01:05 PM

Hello everyone,

I was just this morning able to get to my email. My apologies to everyone for the confusion and any inconvenience regarding the cancellation of yesterday's conference call. I did not have access to my calendar and I had forgotten that the conference call was at 11 am, hence the very late and untimely email cancelling the call.

In the last conference call, we had gone through the last message, and we have now completed our review of all of the data elements for the Standards Paper V1. In a subsequent Standards Committee meeting on November 21st, the committee clarified various issues and adopted several proposals made by the Technical Working Group such as including a control number and eliminating the Date & Time field from all of the records. I will send out the final set of data elements shortly.

At this point we are awaiting direction from the Standards Committee regarding communications protocols, therefore, we will not need to continue with the conference calls. I thank you all for your hard work and participation in the working group. Your time and expertise was very much appreciated.

Regards,

[DTCC's TWG Representative]